United Nations S/2005/70

Security Council

Distr.: General
7 February 2005

Original: English

Letter dated 2 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/843). The Counter-Terrorism Committee has received the attached fourth report from Portugal submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-23300 (E) 100305

Annex

Letter dated 1 February 2005 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

At the request of my Government, and in response to the letter from the Committee dated 8 October 2004, I have the honour to transmit to you the fourth report by Portugal to the Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

(*Signed*) João **Salgueiro**
Permanent Representative of Portugal to the United Nations

Enclosure

Report of Portugal pursuant to the implementation of Resolution 1373 (2001) - Informations and replies to the comments and questions of the Counter Terrorism Committee (CTC) - (Ref. S/AC.40/2004/MS/OC.439)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 The CTC has noted that Portugal recently ratified the Convention for the Suppression of the Financing of Terrorism and was in the process of enacting implementation measures to comply with Decision 2002/475/JHA of the Council of the European Union. The CTC would be grateful to be provided with an outline of the relevant provisions of the Portuguese legislation that give effect to the above mentioned convention and decision.

Portugal ratified, through the Presidential Decree no. 31/2002 of 2 August 2002 the United Nations International Convention for the Suppression of the Financing of Terrorism.

The Framework Decision 2002/475/JHA, of the Council of the European Union, of 13 June, on the fight against terrorism, was incorporated into the domestic law by Law no. 52/2003 of 25 August .

This Law - that revoked Article 300 (terrorist organizations) and Article 301 (terrorism) of the Penal Code - aims to punish the activities of groups, terrorist organizations and terrorist associations. Apart from a provision on domestic terrorism (Article 4), there is a provision in this Law expressly typifying the offence of international terrorism (Article 5). The Act also encompasses the punishment of individual acts of terrorism.

In terms of its application, this Law contains some exceptions to the principle of territoriality, where the Portuguese penal law is applied, unless otherwise stated in a international Treaty or Convention, to facts occurred outside the territory of Portugal when they constitute offences committed by terrorist organizations (Article 2) and of offences of terrorism (Article 4) and when they constitute offences committed by other terrorist organizations (Article 3) and of international terrorism (Article 5), provided that the agent is found in the Portuguese territory and cannot be extradited or surrender to the requesting EU Member State under the execution of the European arrest warrant .

Another innovative aspect of this Law is that it envisages the criminal liability of legal persons or their equivalent (corporate and mere *de facto* associations) for offences under Articles 2 and 5 when carried out on their behalf and in the interest of their organs or representatives, and such liability does not exclude the respective individual liability. The provisions foresee sanctions such as fines and dissolution, the fines measured in days, ranging from a minimum of 100 to a maximum of 1000, with an amount between 5 and 5000 Euros per day. Whenever the fine is applied to an entity without legal personality, the common estate of the entity is directly responsible, and in case of lack or inadequacy of the estate, each of the associates' estate is solidary liable.

Without prejudice of the provisions of other legal instruments, namely Law no. 11/2004, of 27 March, as regards to the prevention of money laundering and Law no. 144/99, of 31 August, on international judicial cooperation in criminal matters, as well as of the general provisions of the Penal Code, all equally applicable to the prevention and the fight against this type of criminality, Law no. 52/2003 implements the obligations that result from the referred Convention of the United Nations, in what concerns the criminalization of the terrorism financing, punished by 8 up to 15 years' imprisonment, as well as the criminal liability of legal persons.

Effectiveness of counter-terrorism machinery

1.2 In the context of effective anti-terrorist strategy: subparagraph 2 b) of the Resolution requires States, *inter alia*, to take steps to prevent the commission of terrorist acts. In this regard, please outline any special anti-terrorist policies that Portugal has developed aimed at preventing the commission of terrorist acts in the following areas:

- **Criminal investigation and prosecution**
- **Links between terrorism and other criminal activities**
- **Physical protection of potential terrorist targets**
- **Strategic analysis and forecasting of emerging threats**

In this context, Portugal has been developing common strategies in line with those approved by the European Union, namely the reinforcement of material and human resources for investigation, the creation of coordination structures to respond to terrorist threats (UCAT - Anti-terrorism Control Unit, involving Polícia Judiciária

(PJ)/Portuguese Criminal Police; Serviços de Informações de Segurança (SIS)/Security Intelligence Service; Polícia de Segurança Pública (PSP)/Public Security Police; Guarda Nacional Republicana (GNR)/National Republican Guard and Serviço de Estrangeiros e Fronteiras (SEF)/Borders and Foreigners Service) and the implementation of Decisions and other EU legal instruments, into the Portuguese domestic law.

Law no. 52/2003 criminalizes as a terrorist act all acts that aim to facilitate, directly or indirectly, any act for terrorism purposes. In this context, it tries to set down all possible connections between instrumental offences and terrorist acts *stricto sensu*, namely through the centralization of criminal information.

In what concerns the protection of possible terrorist targets, it was possible during the preparation of the European Football Championship - Euro 2004 - to identify places and sensitive facilities, to define protection strategies and to create and apply security procedures. Simultaneously, coordination models and communication channels between all the forces and services involved in the prevention of the terrorist threat were tested.

The elaboration of threat assessments increased in terms of periodicity and diversity as a result of the participation of Portugal in several international *fora*, namely at the EU and FATF level. Furthermore, the coordination experience between all intelligence and security forces and services gave an important contribution to the consolidation of threat assessment documents, and recent experiences enabled threat assessments to evolve into risk assessments.

1.3 Has Portugal encountered many difficulties regarding law enforcement and/or the gathering of intelligence in relation to the areas mentioned above? If so, please provide a brief description of what these difficulties were. The CTC would also find it helpful to receive information on recent successful operations in the areas above. In supplying such examples, States are not expected to supply information in respect of ongoing investigations or judicial processes, if to do so would prejudice the proper conduct of an investigation or judicial process

The only difficulties arise from the difference in cultures and languages between the different institutions evolved. A close approach and a compatibilization of methods is being promoted. Several investigations have been carried out on the supportive structures of extremists groups, but details and results cannot yet be disclosed.

1.4 In the context of criminal proceedings: sub-paragraph 2 e) of the Resolution requires States , *inter alia*, to ensure that terrorists and their supporters are brought to justice. Are there any special counter-terrorist measures applied in criminal proceedings? Does Portugal train its administrative, investigative, prosecutorial and judicial authorities to enforce its laws in relation to:

- **Typologies and trends in terrorist financing methods and techniques;**
- **Techniques for tracing criminal assets and funds with a view to their seizure and confiscation.**

The Portuguese penal procedure legislation already contains special instruments on the investigation of offences of terrorism, and, in most recent years, specific legislation on the protection of witnesses was approved (Law no. 90/99 of 14 July).

Within the judiciary, the FIU - Financial Intelligence Unit, was also created - a body that, in the framework of the FATF Recommendations, is responsible for receiving, analysing and sending to the competent judiciary authority the information about suspicious transactions reporting of money laundering and terrorism financing, as well as working with other entities with capacity to control financial flows and other financial transactions, namely the supervision authorities of the financial sector : the Directorate General of Customs and Special Taxes on the Consumption (DGAIEC)/The Portuguese Board of Customs and the Directorate General for Taxation (DGCI). In this context, they are developing efforts to raise the awareness of these entities in relation to the specificities and mechanisms of the financing of terrorism.

The FIU has been trying to incorporate all the recent information obtained at an international level, either on concrete cases or on trends, with annual typologies exercises on money laundering and on terrorism financing accomplished by FATF.

Effectiveness of customs, immigration and border control

1.5 Sub-paragraph 2(g) of the Resolution requires States, *inter alia*, to have in place effective border controls in order to prevent the movement of terrorists and terrorist groups. In this regard:

(a) Could Portugal outline how it implements the common standards set by the World Customs Organization in relation to electronic reporting and the promotion of supply chain security?

It is incumbent upon the Directorate General of Customs and Special Taxes on the Consumption (DGAIEC)/The Portuguese Board of Customs - Ministry of Finance.

At the present, the Portuguese Board of Customs is developing two new informatic projects that will allow the use of electronic reportings and promote the supply chain security.

These two new systems are :

- STADA EXPORTAÇÃO (electronic treatment of export declaration) - This system will permit to produce the electronic report recommended by WCO in order to promote the supply chain security and, at same time, an automatic selection of goods for physical control. It is estimated that this system will be in place on 1st semester of 2005.
- SDS (Cargo Declaration System) - This system will permit the informatic treatment of cargo declarations concerning the entry, transit and exit of goods in Portugal. This system is in test phase.

(b) Is the supervision of persons and cargo in Portugal undertaken by separate agencies (e.g. immigration and customs) or is there one agency responsible for both functions? If there is more than one agency involved, do these agencies share information and do they coordinate their activities?

The documentary check of persons at the Portuguese external borders is exclusively incumbent upon the Serviço de Estrangeiros e Fronteiras (SEF)/ Borders and Foreigners Service - Ministry of Interior.

Luggage control is an exclusive competence of the DGAIEC/The Portuguese Board of Customs.
There is no co-partnership in this matter, merely cooperation and information exchange.

According to its Organic Law, the main missions of the Portuguese Board of Customs are the control of the external border and national customs territory for fiscal and economic purposes, society protection (that involves the national security, public health, environment, cultural property), to manage the excise and other indirect taxes and to fight against fraud and all kind of illicit traffics.

Customs are responsible for the control of goods and all means of transportation in external border. The control of persons (passengers, for example) is only done in the perspective that they could be used as a mean of transportation of goods.
The information is shared in a spontaneous basis by the agencies.

(c) How does Portugal monitor its borders between ports of entry in order to satisfy itself both that these areas are not being used to undertake terrorist activities against its neighbours, as well as to defend itself against possible infiltration by terrorists? Does Portugal have existing arrangements to cooperate with bordering states in order to prevent cross-border terrorists' acts? If so, please elaborate.

Border surveillance between authorized crossing points is incumbent upon the Serviço de Estrangeiros e Fronteiras (SEF)/Borders and Foreigners Service- Ministry of Interior, along with the Direcção-Geral de Autoridade Maritima (DGAM)/ Directorate General of Maritime Authority/Ministry of Defence as for the sea border.

In what concerns the land border, several cooperation agreements concluded with the Kingdom of Spain are in force. These agreements allow a permanent joint work, namely Joint Offices placed along the common border control – including the feasibility for initiating pursuit and/or surveillance operations – and information exchange. It is important to state that such agreements aim, in the first place, at preventing cross border crime, and are the most significant instrument of the fight against illegal immigration. However, they are also important at other levels, namely in the fight against terrorism.

The surveillance of the border, in places where the Customs is not physically represented, is under the responsibility of GNR/BF (National Republican Guard/Fiscal Brigade).

(d) Regarding international flights, does Portugal use advanced passenger manifest programs to check the list of inbound passengers against information contained in databases on terrorism, before the passengers land?

There is an EU Directive concerning the obligation of the Air Traffic Companies to provide the authorities responsible for documental control with details of the passenger's lists. Although it is not yet in force, such procedure is occasionally used in Portugal, namely in flights with a certain level of risk. It is also institutionalised as an obligatory procedure for Maritime Agents (ship operators and/or shipowners) the prior submittal to the authority responsible for documentary check, of the detailed lists of passengers and crew.

In both cases, such lists are checked against databases available to the **SEF** – including **N/SIS** .

(e) The CTC takes positive note that Portugal has acceded to Annex 17 of the Convention on International Civil Aviation. Could Portugal inform the CTC as to the domestic agency or agencies that are responsible for Airport and Seaport security? IF this agency or agencies are distinct form Portugal's police forces, how is information concerning terrorist threats passed on to these organizations? Are periodic security audits performed at airports and seaports? Is access to port facilities controlled? If so, how? Are airport and seaport personnel screened and provided with identity cards to prevent access by unauthorized personnel to these facilities? Are detection devices in place to screen passengers and cargo for weapons and hazardous materials? Are hazardous materials segregated and secured during the movement of cargo by air and sea?

Airport security matters are incumbent upon a structure specifically created for such purpose at national and local level (in each international airport), with the involvement of the following organizations: Instituto Nacional de Aeronáutica Civil (INAC)/ National Institute of Civil Aviation; Polícia de Segurança Pública (PSP)/Public Security Police, Guarda Nacional Republicana (GNR)/National Republican Guard;

Administração Aeroportuária/Airport and Port Authority and Serviço de Estrangeiros e Fronteiras (SEF)/Borders and Foreigners Service.

Security matters at seaports are within the framework of the ISPS Code, in force since July 1st 2004, and specific legislation is being prepared.

The Borders and Foreigners Service/SEF has in all border posts detection instruments for false and falsified documents.

Controls on preventing access to weapons by terrorists

1.6 **Sub-paragraph 2 (a) of the Resolution requires each Member State, *inter alia*, to have in place appropriate mechanisms to deny terrorists access to weapons. In this context, does Portugal's Customs Service implement the recommendations of the WCO concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime (29th June 2002)? If yes, outline the measures applicable in Portugal.**

The recommendations of WCO concerning the Protocol are applied according to the specific competencies of Portuguese Customs.

1.7 **Is it necessary to lodge, register and check the Goods Declaration and supporting documentation concerning firearms prior to their import, export or transit? In addition, is it necessary to encourage importers, exporters or third parties to provide information to Portugal's Customs authorities prior to shipment of such goods?**

In cases of import, export and transit of firearms it is absolutely necessary the presentation of a special licence to Customs Services. After the presentation of the goods to Customs, they could be physically checked at any time. The information concerning such goods prior to their shipment is very welcome.

1.8 **Are mechanisms in place to verify the authenticity of licenses and other official documents in relation to the import, export or transit of firearms?**

As answered at question 1.7, it is necessary to present a special licence to the Customs, the authenticity of which could be verified with the issuing entity.

1.9 Has Portugal implemented, using risk assessment principles, appropriate security measures concerning the import, export and transit of firearms? In this context, does Portugal conduct security checks on the temporary storage, warehousing and transportation of firearms? Does Portugal require that the persons involved in these operations undergo security vetting?

In the import, export and transit of dangerous goods, as firearms, special measures are taken concerning security.

Assistance and Guidance

2.2 The CTC notes with appreciation that the Government of Portugal has offered to provide assistance to other States in connection with the implementation of the Resolution and would appreciate receiving any updates to the information currently posted on the Directory of Assistance. Furthermore, the CTC would encourage Portugal to inform the CTC of assistance it is currently providing to other states in connection with the implementation of the Resolution.

Pursuant to the "Memorandum of Understanding" celebrated between Portugal and the UN/ODC - United Nations Office of Drugs and Crime, technical assistance has been provided to Portuguese speaking countries - Angola, Mozambique, Sao Tome and Principe, Cape Verde, Guinea-Bissau and East-Timor - in the framework of the assistance to the ratification and implementation of the United Nations legal instruments, namely the Convention against Transnational Organized Crime and the respective Additional Protocols; the Convention against Corruption, the 12 Conventions against Terrorism, including UNSC Resolutions such as Resolution 1373 (2001).

It is also important to underline that this technical assistance has also involved the translation, into Portuguese, of the referred legal instruments.

In this context, a second meeting with representatives of those countries took place, in Lisbon, on November 2-5, 2004, with the participation of the UN/ODC. In this meeting

the internal situation of the abovementioned countries was examined aiming the follow-up of the technical assistance in the implementation of the referred United Nations legal instruments.

In what to the activity of assistance to other states developed by the Bank of Portugal is concerned, it has been limited to isolate actions, such as answering the embassies' consultations – e.g. South Korea's and Czech Republic's embassies - about rules and legal proceedings on freezing of banking accounts.

As for the Directorate-General of European Affairs and International Relations of the Ministry of Finance and Public Administration, a jointly meeting with Romania Governments' representatives has been promoted in the framework of EU program *Technical Assistance Information Exchange Office* – TAIEX (on the legal framework of national measures for the fight against the financing of terrorism).

- Money laundering:

In what regards technical assistance provided by the Bank of Portugal on the prevention of money laundering and financing of terrorism, the Bank of Portugal provided in 2004 assistance through the organization of workshops and seminars in Lisbon, for technical staff of the Central Banks of Angola, Cape-Verde, Mozambique, Sao Tome and Principe, for the members of the Banking and Payments Authority of East-Timor and also for the national management of the BCEAO in Guinea -Bissau.

A financial expert was appointed by the Bank of Portugal to integrate the evaluation team of the FATF. This team performed the second mutual evaluation of the Brazilian anti-money laundering and financing of terrorism system, which took place in the end of 2003 and early 2004.

For 2005 there are also planned technical assistance programs with the authorities named above, other than Guinea-Bissau, which includes activities on anti-money laundering and financing of terrorism prevention.